

The Honorable John C. Coughenour
Noted for hearing: 5/28/2021
Oral Argument Requested

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHANNON ANDERSON SAEVIK,

Plaintiff,

v.

SWEDISH MEDICAL CENTER and
REBECCA DAY, individually and as Clinic
Operations Manager of its Organ Transplant and
Liver Center,

Defendants.

No. 2:19-cv-01992-JCC

PLAINTIFF'S MOTION TO
COMPEL PRODUCTION OF
DEFENDANT FOR DEPOSITION
PURSUANT TO RULE 30(b)(6)

FACTUAL BACKGROUND

This case arises under the Washington's Law Against Discrimination and alleges disability discrimination, failure to accommodate pursuant to the FMLA and WLAD, two counts of retaliation (one based on alleged whistleblowing activities), and wrongful discharge. This Court entered its Order setting the discovery cutoff for June 7, 2021 and the Discovery Motions deadline as May 20, 2021.

At this time, it appears the defense is engaging in vexatious tactics poised to avert production of Defendant's 30(b)(6) designees or engage in further conferral thereupon.

On Tuesday, May 11, defense counsel messaged Plaintiff's counsel: "[w]e do not agree to schedule any additional depositions, including the depositions of Ms. Kroeker and the 30(b)(6) deposition/s until we find a suitable date for Ms. Saevik's deposition..."¹ Plaintiff had already offered dates Plaintiff Shannon Anderson Saevik's availability while following up on defense witnesses' availability for deposition.² On May 12, Plaintiff's counsel offered Ms. Saevik's deposition at any time at defense's convenience including after discovery cut-off (except the week of Ms. Saevik's doctor's appointment May 24).³ On May 13, Plaintiff's counsel reiterated that Plaintiff and her counsel were agreeable to allowing her deposition to take place on Friday, June 11, shortly after but during the same week of, the June 7 cut-off.⁴

On Monday, May 17, Plaintiff's counsel confirmed the June 11 date without objection, and stated he was "glad to accommodate [the defense's] schedule."⁵ On May 19, Plaintiff's counsel offered the defense a short continuance in response to defense counsel's multiple requests.⁶

Despite Plaintiff's production of voluminous production of over 1,400 documents in the Fall, hundreds of invasive medical records during March and April, and on-time production of ESI (which was largely duplicative of what has already been produced) on May 18th, the defense now appears poised to renege on producing the Defendant's corporate designee witnesses pursuant to Rule 30(b)(6). This is *after* Plaintiff acceded to defense's questionable, and likely illegal tactic of withholding from agreeing to schedule *any* additional depositions for

¹ Declaration of Benjamin R. Phillips, Exhibit A.

² Declaration of Benjamin R. Phillips, Exhibit B.

³ Declaration of Benjamin R. Phillips, Exhibit C.

⁴ Declaration of Benjamin R. Phillips, Exhibit D.

⁵ Declaration of Benjamin R. Phillips, Exhibit E.

⁶ Declaration of Benjamin R. Phillips, Exhibit F. Although this litigation has been going on for more over a year, the court assigned a new associate as lead fairly recently in the case evolution. See Dkt. Entry dated 1/29/2021.

the past ten days “*until we find a suitable date for Ms. Saevik’s deposition.*” (See **Exhibit A** *supra.*) On May 19, Plaintiff’s counsel offered extending discovery cut-off,⁷ even though the reasons defense pleaded for it are now moot after Plaintiff’s timely production. Plaintiff attempted to appease and accommodate nevertheless, as defense requested, yet now the defense balks.

Now that Plaintiff has produced ESI, medical records, and agreed to accelerated production of psychotherapist records, the defense is threatening to renege on their end of the agreement, engage in further delay tactics, or threaten not to produce the 30(b)(6) designees or Ms. Kroeker’s deposition at all, thus prompting the instant Motion to Compel.

CERTIFICATION

On March 9, 2021, the parties engaged in a discovery conference seeking to resolve this discovery dispute but were unable to do so on all items. Declaration of Benjamin R. Phillips, submitted herewith.

ARGUMENT

A party may be compelled simply on Notice.⁸⁹ A party should not engage in “vexatious scheduling.” E. Norman Veasey, Chief Justice of the Delaware Supreme court and Chair of the ABA Ethics 2000 project characterized vexatious scheduling as a ‘frivolous and abusive litigation tactic.’¹⁰ “Attorneys and judges must take vexatious scheduling problems seriously, and attempt to halt this form of discovery abuse.”¹¹ One of the examples listed is “attorneys can refuse to cooperate in scheduling depositions.”¹²

⁷ Declaration of Benjamin R. Phillips, **Exhibit G**.

⁸ Federal Rule of Civil Procedure 30.

⁹ Notice of Deposition of Defendant Swedish Medical Center Pursuant to Rule 30(b)(6) amended from March 15 to June 7 is attached. Declaration of Benjamin R. Phillips, **Exhibit H**.

¹⁰ Georgetown Journal of Legal Ethics, Vol. 12:1, page 9.

¹¹ Id.

¹² Id.

1 Plaintiff has demonstrated commitment to upholding all discovery obligations. Yet
2 Defendant is poised to engage woefully disregarding its obligations to comply with the rules of
3 discovery and to confer in good faith in producing the Defendant designee as witnesses
4 pursuant to Rule 30(b)(6).
5

6 For the foregoing reasons, Plaintiff, SHANNON ANDERSON SAEVIK, respectfully
7 requests that her Motion to Compel be granted.

8 Dated this 20th day of May, 2021.

9 LAW OFFICES OF
10 JUDITH A. LONNQUIST, P.S.

11 /s/ Benjamin R. Phillips
12 Benjamin R. Phillips
13 Attorney for Plaintiff
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CERTIFICATE OF SERVICE

I, Benjamin R. Phillips, an employee of the Law Offices of Judith A. Lonnquist, P.S., declare under penalty of perjury that on the date below, I caused to be served upon the below-listed parties, via the method of service listed below, a true and correct copy of the foregoing document.

Party	Method of Service
Mary R. Sanden, WSBA #45608 Davis Wright Tremaine LLP 929 108 th Ave NE, Suite 1500 Bellevue, WA 98004 Telephone: 206.646.6110 marysanden@dwt.com	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Regular Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-service via the Court <input checked="" type="checkbox"/> E-Mail
Paula Lehmann, WSBA #20678 Davis Wright Tremaine LLP 929 108 th Ave NE, Suite 1500 Bellevue, WA 98004 Telephone: 206.622.3150 paulalehmann@dwt.com	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Regular Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-service via the Court <input checked="" type="checkbox"/> E-Mail
Katie Rosen, WSBA #29465 Kristina Markosova, WSBA #47924 Davis Wright Tremaine LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 98104 Telephone: 206.622.3150 katierosen@dwt.com kristinamarkosova@dwt.com	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Regular Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-service via the Court <input checked="" type="checkbox"/> E-Mail

Dated: May 20, 2021

/s/ Benjamin R. Phillips
Benjamin R. Phillips